

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/790,418
Inventor(s) : Paolo Veglio et al.
Filed : March 1, 2004
Art Unit : 3761
Examiner : Paula L. Craig
Docket No. : 9562
Confirmation No. : 1478
Customer No. : 27752
Title : PANTILINER

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on June 3, 2008. A timely Notice of Appeal was filed on September 3, 2008. Submitted herewith is a Petition for a Three-Month Extension of Time, and the fee required under 37 CFR §1.17(a), providing for a timely response up to and including February 3, 2009.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-7 and 9-20 are rejected in the present application and are appealed. Claim 8 was previously canceled by Appellants.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

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STATUS OF AMENDMENTS

No amendment was filed subsequent to the most recent final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The presently claimed invention relates to a sanitary napkin having a body-facing side and a garment-facing side, the sanitary napkin comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween. *See* page 2, lines 17-18. The absorbent core comprises relatively hydrophilic material defining a core outer periphery. *See* page 3, lines 24-29. The topsheet and backsheet each comprise relatively hydrophobic nonwoven material. *See, e.g.,* page 3, line 29 to page 4, line 2; and page 5, lines 6-10. At least one of the topsheet and backsheet defines an outer periphery of the sanitary napkin that is substantially larger than the core outer periphery. *See* page 2, lines 21-22 and page 5, lines 23-32. The area between the core outer periphery and the sanitary napkin outer periphery is a breathable zone that completely surrounds the core outer periphery. *See* page 5, line 25 to page 6, line 9. The sanitary napkin also comprises a fluid impermeable barrier disposed between the backsheet and the absorbent core. *See* page 5, lines 16-22. The fluid impermeable barrier is disposed within said core outer periphery and does not extend beyond said core outer periphery. *Id.* The garment-facing side of the sanitary napkin has pressure sensitive adhesive thereon for affixing the sanitary napkin to the wearer's undergarment. *See* page 3, lines 12-15.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-4, 6-7, 10, 12-14, and 16-17 have been rejected under 35 USC §103(a) as being obvious over Wang et al., US 4,713,578, in view of Horney et al., US 5,549,589.

Claims 5, 9, and 11 have been rejected under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Kudo et al., US 2003/0187417 A1.

Claims 15 and 18-20 have been rejected under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Carstens et al., US 6,582,411.

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ARGUMENTS

Appellants respectfully submit that Claims 1-7 and 9-20 are patentable over the cited references.

Rejection Under 35 USC §103(a) Over Wang et al. in view of Horney et al.

Claims 1-4, 6-7, 10, 12-14, and 16-17 have been rejected under 35 USC §103(a) as being obvious over Wang et al., US 4,713,578, in view of Horney et al., US 5,549,589. Appellants respectfully traverse this rejection.

Wang et al. teach a baffle having a central and non-central zone, each zone being impermeable to menses and having a particular water vapor transmission rate, with the central zone having a water vapor transmission rate less than the non-central zone of the baffle. The baffle can be used in a sanitary napkin or pad, as shown in FIGS. 1 and 2. FIG. 1 shows a sanitary pad 10 comprising a baffle 11 (having a central zone 14) and absorbent material 12 wrapped with a fluid pervious cover 13. FIG. 2 shows a sanitary pad 20 comprising a baffle 21 (having a central zone 24 extending the length of the baffle 21) and absorbent material 22 wrapped with a fluid pervious cover 23.

The Office Action asserts that the baffle 11 of FIG. 1 corresponds to Appellants' "fluid permeable backsheet" claim element. Appellants respectfully point out that the baffle 11 of Wang et al. is clearly fluid impermeable, as the central and non-central zones of the baffle of Wang et al. are impermeable to menses. *See, e.g.*, Abstract of Wang et al. As such, Wang et al. clearly do not teach a fluid pervious backsheet, based on the Office Action's interpretation of the Wang et al. reference.

Futhermore, the backsheet of the presently claimed invention constitutes an outer layer on the garment-facing side of the sanitary napkin. *See, e.g.*, page 4, lines 18-20. As such, the baffle 11 of Chen et al. cannot constitute a backsheet as it is not an outer layer of the absorbent article.

Appellants further point out that it appears the baffle 11 of FIG. 1 of Wang et al. is actually positioned between the absorbent material 12 and the fluid pervious cover 13 of Wang et al. (it appears the fluid pervious cover 13 wraps around the underside of the sanitary pad 10). As such, the baffle 11 could be interpreted to be a fluid impermeable barrier, as required by the present claims. However, the presently claimed invention requires that such a fluid impermeable barrier does not extend beyond the core outer

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periphery of the absorbent core. In contrast to the presently claimed invention, the fluid impermeable baffle 11 of Wang et al. clearly extends beyond the outer periphery of the absorbent material 12.

Based on either interpretation of the baffle of the Wang et al. reference, Wang et al. fails to teach or suggest the presently claimed invention.

Additionally, Wang et al. teach nothing about its fluid pervious cover 13. As a result, Wang et al. do not teach or suggest a topsheet and a backsheet that are each comprised of a relatively hydrophobic nonwoven material, as presently claimed.

The Office Action's citation of Horney et al. as a secondary reference does not remedy the deficiencies of the teachings of Wang et al. Indeed, Horney et al. teach an absorbent article having a fluid impervious backsheet, in contrast to the presently claimed invention which requires a fluid permeable backsheet. As such, Horney et al. do not remedy the deficiencies of Wang et al.

Appellants therefore submit that the Office Action has failed to set forth a *prima facie* case of obviousness based on the disclosure of Wang et al. in view of Horney et al. As such, Appellants submit that the rejection of Claims 1-4, 6-7, 10, 12-14, and 16-17 under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. is improper and respectfully request that it be reversed.

Rejection Under 35 USC §103(a) Over Wang et al. in view of Horney et al. and
further in view of Kudo et al.

Claims 5, 9, and 11 have been rejected under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Kudo et al., US 2003/0187417 A1. Appellants respectfully traverse this rejection.

Wang et al. and Horney et al. are discussed above. Kudo et al. do not remedy the lack of teachings of Wang et al. and Horney et al. with regard to the presently claimed invention. Therefore, Appellants submit that the rejection of Claims 5, 9, and 11 under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Kudo et al. is improper and respectfully request that it be reversed.

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Rejection Under 35 USC §103(a) Over Wang et al. in view of Horney et al. and
further in view of Carstens et al.

Claims 15 and 18-20 have been rejected under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Carstens et al., US 6,582,411. Appellants respectfully traverse this rejection.

Wang et al. and Horney et al. are discussed above. Carstens et al. do not remedy the lack of teachings of Wang et al. and Horney et al. with regard to the presently claimed invention. Therefore, Appellants submit that the rejection of Claims 15 and 18-20 under 35 USC §103(a) as being obvious over Wang et al. in view of Horney et al. and further in view of Carstens et al. is improper and respectfully request that it be reversed.

SUMMARY

In view of all of the above, it is respectfully submitted that the rejection be reversed and that all the pending claims be allowed.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

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Date: February 3, 2009

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CLAIMS APPENDIX

1. A sanitary napkin having a body-facing side and a garment-facing side, the sanitary napkin comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein,
 - a. said absorbent core comprises relatively hydrophilic material defining a core outer periphery;
 - b. said topsheet and said backsheet comprise relatively hydrophobic nonwoven material, at least one of said topsheet and said backsheet defining a sanitary napkin outer periphery that is substantially larger than said core outer periphery, the area between said core outer periphery and said sanitary napkin outer periphery being a breathable zone that completely surrounds said core outer periphery;
 - c. said sanitary napkin further comprising a fluid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being disposed within said core outer periphery and not extending beyond said core outer periphery, and
 - d. wherein said garment-facing side has thereon pressure sensitive adhesive for affixing to a wearer's undergarment.
2. The sanitary napkin of Claim 1, wherein at least one of said topsheet and said backsheet has sufficient hydrophobicity as to be rendered fluid repellent.
3. The sanitary napkin of Claim 1, wherein said topsheet and said backsheet have a common outer periphery.
4. The sanitary napkin of Claim 1, wherein the periphery of said fluid impermeable barrier coincides with said core outer periphery.
5. The sanitary napkin of Claim 1, wherein said topsheet and said core are joined by mechanical entangling of a portion of their respective fibers.

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6. The sanitary napkin of Claim 1, wherein said core outer periphery defines a generally oval shape.
7. The sanitary napkin of Claim 1, wherein said sanitary napkin periphery defines a generally hour-glass shape.
9. The sanitary napkin of Claim 1, wherein said topsheet and said absorbent core are embossed to expose and entangle fibers from said core with said topsheet.
10. The sanitary napkin of Claim 1, wherein said topsheet comprises a spunbonded nonwoven web.
11. The sanitary napkin of Claim 10, wherein said topsheet comprises bicomponent fibers.
12. The sanitary napkin of Claim 1, wherein said backsheet comprises a spunbonded nonwoven web.
13. The sanitary napkin of Claim 12, wherein said backsheet comprises polypropylene fibers.
14. The sanitary napkin of Claim 1, wherein said absorbent core comprises superabsorbent material.
15. The sanitary napkin of Claim 14, wherein said superabsorbent material comprises superabsorbent fibers.
16. The sanitary napkin of Claim 1, wherein said core comprises a carded airlaid web.
17. The sanitary napkin of Claim 1, wherein said sanitary napkin is a pantiliner.
18. A sanitary napkin comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein,
 - a. said absorbent core comprises relatively hydrophilic airlaid nonwoven material having fibrous AGM and defining a core outer periphery;

- b. said topsheet and said backsheet comprise relatively hydrophobic spunbonded nonwoven material, said topsheet and said backsheet defining a sanitary napkin outer periphery that is larger than said core outer periphery, the area between said core outer periphery and said sanitary napkin outer periphery being a breathable zone that completely surrounds the core outer periphery, such that vapors can permeate completely through said sanitary napkin in said breathable zone;
 - c. said sanitary napkin further comprising a fluid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being disposed adjacent to said absorbent core and within said core outer periphery and not extending beyond said core outer periphery.
19. The sanitary napkin of Claim 18, wherein said sanitary napkin is a pantiliner.
20. A thin absorbent pantiliner comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein,
- a. said absorbent core has a basis weight of between about 50 gsm and 100 gsm, said absorbent core comprising relatively hydrophilic airlaid nonwoven material having at least about 5 wt % AGM fiber content and defining a core outer periphery;
 - b. said topsheet and said backsheet comprise relatively hydrophobic fluid repellent spunbonded nonwoven material, said topsheet and said backsheet defining a pantiliner outer periphery that is larger than said core outer periphery, the area between said core outer periphery and said pantiliner outer periphery being a breathable zone that completely surrounds the core outer periphery, such that vapors can permeate completely through said pantiliner in said breathable zone;
 - c. said pantiliner further comprising a fluid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being a polyethylene film disposed adjacent to said core and within said core outer periphery and not extending beyond said core outer periphery.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.